Rep. 385. If such free use of character evidence is well founded, the transition is easy to a general exception allowing evidence of the character of third persons whenever it is material.[7] If, on the other hand, the general rule is grounded in experience and justice, its application ought not to be further limited. While good character has a material, though uncertain, value in disproving a depraved act, bad character is of less weight in proving the commission of a particular act. The fact that a man is capable of a certain crime tends only remotely to show that he was actually committing it at a particular time. Moreover, character evidence is likely to be colored by individual prejudice, and it is also of so vague a nature and so difficult to test by cross-examination, that it may go to the jury unshaken, though manufactured to suit the needs of the case. Obviously, too, although the degradation of the person injured has no bearing upon the degree of the defendant's crime, it is hardly possible that the jury's estimate of his guilt will not be influenced by it. Because of the inherent weakness of character evidence, and the unwarranted effect it is likely to have on the jury, it would appear to be the safer course to adhere to the general rule, save in the cases where precedent has established exceptions.

PAYMENT INTO COURT AS AN ADMISSION OF LIABILITY. — When payment into court by a defendant was first allowed, the money was brought in under a rule of court, that, unless the plaintiff accepted it in discharge of his claim, the amount should be struck from the declaration.[1] By the General Rules of Trinity Term, 1 Vict.,[2] however, it was provided that such payment should in all cases be pleaded. It had already been decided that a tender could not be pleaded concurrently with a denial of liability on the same cause of action,[3] although the pleading of inconsistent defenses was permissible at the discretion of the court.[4] On the same principle, it was now held that payment into court could not be pleaded in conjunction with a denial of the cause of action thereby admitted.[5] This remained the rule, until a decision under the Judicature Acts of 1873 and 1875[6] effected the radical change of allowing the plea of payment into court concurrently with any defense denying the cause of action. The decision might at first appear a necessary consequence of the new statutes stripping the court of its discretionary powers in permitting inconsistent defenses; but this view disregards the fundamental question, whether a proceeding which amounts to conclusive admission of the right of action can properly be termed a defense at all, though, by a technical rule of procedure, it appears on the record as a plea. On this latter reasoning the court in an early Massachusetts case[7] summarily disposed of the contention that to refuse a defendant who had paid money into court the right to deny the cause of action would be to violate the statute allowing inconsistent defenses. The case is in accord

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[7] 1 Wigmore, Ev. 68.

[1] See 1 Tidd's Pr., 6th ed., 650. The New Jersey practice would appear to be the same. See Levan *v.* Sternfeld, 55 N. J. Law 41.

[2] See 3 Chitty, Pr. 577.

[3] Maclellan *v.* Howard, 4 T. R. 194; Jenkins *v.* Edwards, 5 T. R. 97.

[4] St. 4 Anne, c. xvi. § 4.

[5] Thompson *v.* Jackson, 1 Man. & G. 242.

[6] Berdan *v.* Greenwood, 3 Ex. D. 251. Followed, and the rule extended to the plea of truth in an action for libel in Hawkesley *v.* Bradshaw, 5 Q. B. D. 302.

[7] Bacon *v.* Charlton, 61 Mass. 581.

with the universal American rule,[8] and, if the premise on which it proceeds is admitted, it is unimpeachable.

Obviously, then, the English rule can be upheld only by regarding payment into court as not necessarily an admission of the cause of action. But, then, what is it? It cannot be construed as an offer of compromise, made, through the court, at the last moment; for, on payment into court, the money becomes the property of the plaintiff whatever the outcome of the action. Perhaps it may best be interpreted as a sort of premium paid by the defendant to secure himself against payment of costs in case he is correct in his judgment that the plaintiff has no right of action for an amount beyond that tendered. Provided such is actually his intention, it seems reasonable enough to allow him this privilege, since the plaintiff can in no wise be prejudiced thereby.[9]

In a recent case of first impression on the point, the St. Louis Court of Appeals has followed the American rule. *Wells* v. *Missouri Edison Co.*, 84 S. W. Rep. 204. The case, however was a tort action, in which paymen into court is not a common law right, having been first given by statute.[10] Since no such statute exists in Missouri, it had previously been held that in such an action payment into court will not avail the defendant to escape the payment of costs, though the recovery is for a smaller amount than that brought in.[11] But if payment into court by the defendant in tort actions is void, it should be nugatory as well in respect of benefits to be derived therefrom by the plaintiff as by the defendant. The principal case, therefore, can be supported only if it overrules the earlier case.

EFFECT OF ULTRA VIRES TRANSACTIONS. — When the sovereign gave definite effect to the idea that the act of a community of men should be distinguished from their several acts by erecting the community into an artificial legal person,[1] the courts naturally had to pass upon the rights and liabilities of this new being. In its nature they found its limitations. Being invisible, it could appear only by attorney;[2] and being intangible, it could not suffer or commit personal injuries.[3] Having no soul,[4] it could not commit a crime[5] or take an oath.[6] All these limitations were inherent in its nature, and not due to any legal prohibition. Even in requiring a seal, the courts merely followed the custom of cor-

[8] See 1 Greenleaf, Ev., 16th ed., § 205.

[9] See the opinions of Thesiger, L. J., in Berdan *v.* Greenwood, *supra*, and of Lord Bramwell, L. J., in Hawkesley *v.* Bradshaw, *supra*. On this point, too, later English legislation is suggestive. By Rules of the Supreme Court, 1883, Order XXII. rule 6, it is provided that, when payment into court is accompanied by an express denial of the right of action, and when the plaintiff persists in his suit, and recovers less than the amount tendered, the difference shall be returned to the defendant. It would seem, also, that, when the payment is unaccompanied by such denial, the old practice has been restored, and the defendant cannot show that no cause of action exists. See Dumbleton *v.* Williams, 102 L. T. 384.

[10] St. 3 & 4 Will. IV. c. 42, § 21.

[11] Joyner *v.* Bentley, 21 Mo. App. 26.

[1] 1 Poll. & Mait. Hist. Eng. Law, 2d ed., 502, 669 *et seq.*

[2] Brooke Abr. *tit.* Corp. 63.

[3] Brooke Abr. *tit.* Corp, 63. This has been doubted. See Grant, Corp. 278.

[4] Tipling *v.* Pexall, 2 Bulst. 233.

[5] See Case of Sutton's Hospital, 10 Co. 22 b, 32 b.

[6] Wych *v.* Meal, 3 P. Wms. 310.